

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS ROMERO,

Plaintiff,

v.

ANGELO TREVINO, et al.,

Defendants.

No. 2:24-cv-3454 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 The court has reviewed plaintiff’s complaint and finds that plaintiff may proceed on
7 claims against defendants Trevino, Gosai and Yang for excessive force in violation of the Eighth
8 Amendment. Plaintiff has two options: (1) proceed on the claims identified above; or (2) seek
9 leave to file an amended complaint in an attempt to cure deficiencies with respect to other claims.

10 In deciding whether to file an amended complaint, plaintiff should consider the following:

11 1. Before proceeding on a claim arising under California law in this court plaintiff must
12 comply with the terms of the California Tort Claims Act, and then plead compliance. See Cal.
13 Gov’t Code § 910 et seq.; Mangold v. Cal. Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9th Cir.
14 1995). Complaints must present facts demonstrating compliance, rather than simply conclusions
15 suggesting as much. Shirk v. Vista Unified School Dist., 42 Cal.4th 201, 209 (2007).

16 2. Prison officials generally cannot retaliate against inmates for exercising First
17 Amendment rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985). In order to state a
18 claim for retaliation, plaintiff must point to facts indicating a causal connection between adverse
19 action and the protected conduct. Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012).

20 3. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
21 or connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423
22 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil
23 rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
25 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
26 complaint be complete in itself without reference to any prior pleading.

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1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Director of the California
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff is granted 21 days within which to complete and return the attached form
7 notifying the court whether he wants to (1) proceed on claims against defendants Trevino, Gosai
8 and Yang for excessive force in violation of the Eighth Amendment and voluntarily dismiss all
9 other claims and defendants or (2) file an amended complaint in an attempt to cure the
10 deficiencies in his complaint with respect to his other claims. If plaintiff does not return the form,
11 this action will proceed on the claims described above and the court will recommend all other
12 claims and defendants be dismissed.

13 Dated: February 28, 2025

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CAROLYN K. DELANEY
15 UNITED STATES MAGISTRATE JUDGE
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PLAINTIFF'S NOTICE OF
HOW TO PROCEED

Check **one**:

_____ Plaintiff wants to proceed immediately on claims against defendants Trevino, Gosai and Yang for excessive force in violation of the Eighth Amendment. Plaintiff voluntarily dismisses all other claims and defendants. **OR**

_____ Plaintiff wants time to file an amended complaint.

DATED:

Plaintiff